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BANKRUPTCY.

1. *Action by trustee to recover possession of goods in storage, warehouse receipts for which had been hypothecated—Jurisdiction of District Court—Right of appeal to Circuit Court of Appeals.*

The trustee in bankruptcy claiming the right of possession of certain merchandise of the bankrupt in storage, warehouse receipts for which he had hypothecated for loans, instituted summary proceedings for possession and directions for sale in the District Court. Claimants who were the warehousemen and holders of warehouse receipts objected to the jurisdiction but were overruled and thereafter the trustee and claimant stipulated for sale of the property and deposit of proceeds subject to further order of the court. The District Court held that claimants were entitled to the property. The trustee appealed and the claimants denied their right of appeal. The Circuit Court of Appeals reviewed the facts and found the trustee entitled to possession. On

certiorari *held* that: As the proceeding was one in bankruptcy there was no appeal to the Circuit Court of Appeals and its jurisdiction was confined, under clause of § 24, to revision in matter of law on notice and petition. The provisions as to revision in matter of law and appeal must be construed in view of distinctions recognized in §§ 23, 24 and 25, between steps in bankruptcy proceedings proper and controversies arising out of the settlement of estates. The bankruptcy court is without jurisdiction to determine adverse claims to property not in the possession of the assignee in bankruptcy by summary proceedings, whether absolute title or only a lien is asserted, and suits by a trustee may only be brought in courts where they might have been brought by the bankrupt. The fact that the claimants followed the case after their objections to the jurisdiction of the District Court had been overruled, did not amount to a waiver of the objections or consent to the jurisdiction of the court, and the sale of the merchandise by court did not, under the circumstances of this case, change the situation or create a fund which conferred jurisdiction. The Circuit Court of Appeals had no jurisdiction of the appeals and they should have been dismissed. The District Court had no jurisdiction to go to judgment in the proceeding and on ascertaining that fact should have declined to retain it, and have entered a decree for the return of the money to the claimants without prejudice to the right of the trustee to litigate in a proper court. Although it turns out that if the District Court has not jurisdiction it may proceed until that fact appears and may, on consent, direct a sale of perishable property involved, and on relinquishing jurisdiction an order returning the proceeds is equivalent to an order returning the property. *First National Bank* v. *Title & Trust Co.*, 280.

2. *Exemptions—Endowment policy, when exempt under laws of State.*
Policies of insurance which are exempt under the law of the State of the bankrupt are exempt under § 6 of the bankrupt act of 1898, even though they are endowment policies payable to assured during his lifetime and have cash surrender value, and the provisions of § 70*a* of the act do not apply to policies which are exempt under the state law. It has always been the policy of Congress, both in general legislation and in bankrupt acts, to recognize and give effect to exemption laws of the States. *Holden* v. *Stratton*, 202.

3. *Preference—Taking possession of after-acquired property under mortgage.*
Whether the taking possession of after-acquired property within four months of the filing of the petition in bankruptcy, under a mortgage made in good faith prior to that period, is good or is void as against the trustee in bankruptcy, depends upon whether it is good or void according to the law of the State. *Thompson* v. *Fairbanks*, 196 U. S. 516. *Held*, that such a taking is under the circumstances of this case good according to the law of Massachusetts as construed by its Supreme Judicial Court. *Humphrey* v. *Tatman*, 91.

See JURISDICTION, E;
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CARRIERS.

Right to exclusive use of terminal facilities—Contract with connecting carrier —Wharf rights.

A common carrier may agree with such other carrier as it may choose to forward beyond its own line goods it has transported to its terminus; and, if it has adequate terminal facilities at a sea port, sufficient for all freight destined for that place, it is not obliged to allow other and competing carriers to load and discharge at a wharf owned by it and erected for facilitating the transportation of through freight to points beyond that place. The fact that a wharf is built by a railroad company on what might be the extension of a public street, under permissions of the municipality, does not, in the absence of express stipulations, make it a public wharf, or affect the company's right of sole occupancy, or power of regulation, thereof. *Louisville &c. R. R. Co.* v. *West Coast Co.*, 483.

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Booth v. *Clark*, 17 How. 338, followed in *Great Western Mining Co.* v. *Harris*, 561.

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Pacific National Bank v. *Mixter*, 124 U. S. 721, followed in *Van Reed* v. *Peoples' National Bank*, 554.

Pallister, Re, 136 U. S. 257, followed in *Benson* v. *Henkel*, 1.

Russell v. *United States*, 182 U. S. 516, 530, followed in *Harley* v. *United States*, 229.

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CONSTITUTIONAL LAW
Commerce. See Interstate Commerce.

1. *Contracts—Impairment of obligation by taxation, exemption from which claimed thereunder.*

Where none of the expressions in a contract between a street railway company and the municipality in regard to the extension of company's tracks for the better advantage of, and affording more facilities to, the public, import any exemption from taxation, the subsequent imposition of a tax, otherwise valid, is not invalid under the impairment of obligation clause of the Constitution. *Savannah, Thunderbolt &c. Ry.* v. *Savannah*, 392.

2. *Contracts—Purchase and sale of labor—Unconstitutionality of New York labor law, section* 110.

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power. Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor. There is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occu-

pation of a baker. Nor can a law limiting such hours be justified as a health law to safeguard the public health, or the health of the individuals following that occupation. Section 110 of the labor law of the State of New York, providing that no employés shall be required or permitted to work in bakeries more than sixty hours in a week, or ten hours a day, is not a legitimate exercise of the police power of the State, but an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract, in relation to labor, and as such it is in conflict with, and void under. the Federal Constitution. *Lochner* v. *New York*, 45.

See CONTRACTS.

3 *Due process of law does not require judicial trial of right to enter country.*

Even though the Fifth Amendment does apply to one seeking entrance to this country, and to deny him admission may deprive him of liberty, due process of law does not necessarily require a judicial trial and Congress may entrust the decision of his right to enter to an executive officer. *United States* v. *Ju Toy*, 253.

4. *Due process of law—Deprivation of property—What is public use—Validity of Utah ditch law.*

Whether the statute of a State permitting condemnation by an individual for the purpose of obtaining water for his land or for mining, is or is not a condemnation for public use and, therefore, a valid enactment under the Constitution, depends upon considerations relating to the situation of the State and its possibilities for agricultural and mining industries. The rights of a riparian owner in and to the use of water flowing by his land, are not the same in the arid and mountainous western States as they are in the eastern States. This court recognizes the difference of climate and soil, which render necessary different laws in different sections of the country, and what is a public use largely depends upon the facts surrounding the subject, and with which the people and the courts of the State must be more familiar than a stranger to the soil. While private property may not in all cases be taken to promote public interest and tend to develop the natural resources of the State, in view of the peculiar conditions existing in the State of Utah, and as the facts appear in this record, the statute of that State permitting individuals to enlarge the ditch of another and thereby obtain water for his own land, is within the legislative power of the State, and does not in any way violate the Federal Constitution. *Clark* v. *Nash*, 361.

5. *Due process of law—Validity of Pennsylvania statute of* 1885 *relative to administration of estates of absentees.*

That the Fourteenth Amendment does not deprive the States of their police power over subjects within their jurisdiction is elementary; and, in determining the validity of a statute, the question before the court is not the wisdom of the statute but whether it is so beyond the scope of the municipal government as to amount to a want of due process of law The right to regulate concerning the estate or property of absentees is an attribute, which in its very essence belongs to all governments, to the

end that they may be able to perform the purpose for which government exists, and in the absence of restrictions, in its own constitution, none of which exists in the State of Pennsylvania, is within the scope of a state government nor does the exercise of this power violate the Fourteenth Amendment by depriving the absentee of his property without due process of law in case he is alive when the proceedings are initiated. Where the provisions of a state statute for administration on the assets of an absentee are reasonable as to the period of absence necessary to create the presumption of death, and create proper safeguards for the protection of his interests in case the absentee should return, it does not violate the due process clause of the Fourteenth Amendment, because it deprives the absentee of his property without notice. The Pennsylvania statute of 1885, Public Laws, p. 155, providing for the administration of property of persons absent, and unheard of, for over seven or more years, is a valid enactment and is not repugnant to the Fourteenth Amendment because it deprives the absentee of his property without due process of law. *Cunnius* v. *Reading School District*, 458.

See TAXATION, 1.

6. *Equal protection of laws—Due process of law—Classification for taxation.*

A classification which distinguishes between an ordinary street railway, and a steam railroad, making an extra charge for local deliveries of freight brought over its road from outside the city, *held*, under the facts of this case, not to be such a classification as to make the tax void under the Fourteenth Amendment because it denies the street railway the equal protection of the law, or deprives it of its property without due process of law. *Savannah, Thunderbolt &c. Ry.* v. *Savannah*, 392.

7. *Equal protection of laws—Discrimination in enforcement; sufficiency of showing.*

Where the petitioner contends that a criminal law of the State is unconstitutional because it denies a class to which he belongs the equal protection of the law, not on the ground that it is unconstitutional on its face, or discriminatory in tendency and ultimate actual operation, but because it is made so by the manner of its administration, in being enforced exclusively against such class, it is a matter of proof and no latitude of intention will be indulged, and it is not sufficient to simply allege such exclusive enforcement but it must also appear that the conditions to which the law was directed do not exclusively exist among that class and that there are other offenders against whom the law is not enforced. *Ah Sin* v. *Wittman*, 500.

8. *Full faith and credit clause; judgment not affected by method of obtaining service of process.*

Service of a writ, in Ohio, upon a party who came into the State for the purpose of being present at the taking of a deposition, which was taken according to the notice, if it would have been good otherwise, is not made

bad by the fact that the notice was given for the sole purpose of inducing the party to come into the State. Refusal by the court of the other State to treat the judgment based on such service as binding is a failure to give it due faith and credit as required by Article IV, § 1, of the Constitution of the United States. *Jaster* v. *Currie*, 144.

9. *Full faith and credit denied to judgment entered on consent, having same force as one entered in invitum.*

Pursuant to the statutes of Illinois, a wife living apart from her husband, both being citizens of Illinois, sued for separate maintenance alleging that she was so living on account of the husband's cruelty and adultery and without any fault on her part. The suit was contested, and, after much evidence had been taken, the husband filed a paper admitting that the evidence sustained the wife's contention, and consenting to a decree providing for separation and support on certain terms; and the wife filed a paper accepting the terms offered by the husband if the decree found that her living apart from her husband was without fault on her part. Such a decree was entered. Subsequently the husband removed to California and commenced a suit for divorce on the ground of desertion. The wife contested and pleaded the Illinois judgment as an estoppel, but the California court declined to recognize it on the ground that the issues were not the same, and also because it was entered on consent. The wife then defended on the merits and judgment was entered in favor of the husband. Reversed on writ of error and *held* that under the circumstances the wife did not waive her right to assert the estoppel of the judgment by defending on the merits. The issues involved in the Illinois case and the California case were practically the same and under the full faith and credit clause of the Constitution the California court should have held that the Illinois judgment was an estoppel against the assertion of the husband that the wife's living apart from him was through any fault on her part or amounted to desertion. As under the Illinois statutes the judgment entered in favor of the wife was necessarily based on a judicial finding that her living apart was not through her fault the papers filed were to be regarded as consents that the testimony be construed as sustaining the wife's contention and not as mere consents for entry of judgment. As a judgment in Illinois entered on consent has the same force as a judgment entered *in invitum*, and is entitled to similar faith and credit in the courts of another State. *Harding* v. *Harding*, 317.

See GARNISHMENT.

○10. *Trial—Constitutional provision applied to removal from one jurisdiction to another.*

The constitutional right of a defendant to a speedy trial and by a jury of the district where the offense was committed, relates to the time and not to the place of trial, and cannot be invoked by a defendant, indicted in more than one district, to prevent his removal from the district in which he happens to be to the other in which the Government properly elects to try him. *Beavers* v. *Haubert*, 77.

11. *Waiver of constitutional rights.*

The rule reiterated that persons may by their acts, or omissions to act, waive rights which they might otherwise have under the Constitution and laws of the United States; and the question whether they have or have not lost such rights by their failure to act, or by their action, is not a Federal question. The judgment in this case rested on grounds broad enough to sustain it independent of any Federal question. *Leonard* v. *Vicksburg, S. & P R. R. Co.*, 416.

CONSTRUCTION.

OF RELEASE. *See* Release and Discharge;
OF STATUTES. *See* Interstate Commerce;
OF TREATIES. *See* Treaties. Statute, A.

CONTRACTS.

Insurance—Lex loci contractus—Impairment of obligation—Practice as to construction of state statute.

A certificate of insurance on the life of a member residing in New York in a mutual association was executed by the officers in Illinois; it provided that it should first take effect as a binding obligation when accepted by the member, and the member accepted it in New York. It contained a provision that it was to be null and void in case of suicide of insured and also one waiving all right to prevent physicians from testifying as to knowledge derived professionally. After the insured died the association defended an action brought in New York on the ground of suicide and claimed that §§ 834, 836, N. Y. Code Civil Procedure, under which the court excluded testimony of physicians in regard to condition of deceased, were inapplicable because the policy was an Illinois contract and also because in view of the waiver in the certificate their enforcement impaired the obligation of the contract. *Held*, that the general rule is that all matters respecting the remedy and the admissibility of evidence depend upon the law of the State where the suit is brought. Under the circumstances of this case the contract was a New York contract and not an Illinois contract. As §§ 834, 836, of the N. Y. Code of Civil Procedure, were enacted prior to the execution of the contract involved, they could not impair its obligation. In cases of this nature this court accepts the construction given by the courts of the State to its statutes, and even if under § 709, Rev. Stat., this court could review all questions presented by the record, the judgment should be affirmed. *Knights of Pythias* v. *Meyer*, 508.

See CARRIERS; JURISDICTION, D;
CONSTITUTIONAL LAW, 2; MAILS;
RESTRAINT OF TRADE.

CORPORATIONS.

Sufficient compliance with law of Mississippi to constitute corporation capable of suing in Federal court.

The charter of a corporation in Mississippi provided that the incorporators "are hereby created a body politic and corporate," and also that "as

soon as ten thousand dollars of stock is subscribed and paid for said corporation shall have power to commence business." The ten thousand dollars was not paid in, but the corporation after doing business commenced an action against a citizen of another State in the Circuit Court of the United States for North Carolina for goods sold; defendant denied any knowledge or information sufficient to form a belief as to plaintiff's corporate capacity. Plaintiff recovered in the Circuit Court but the Circuit Court of Appeals held that owing to the failure to pay in the amount specified in the charter, plaintiff was not a corporation and a citizen of Mississippi, and that the jurisdiction of the Circuit Court did not affirmatively appear. *Held*, error that the denial of defendant was sufficient under the practice of North Carolina to put the question of plaintiff's corporate capacity to sue in issue. That for purposes of suing and being sued in the courts of the United States the members of a corporation are to be deemed citizens of the State by whose laws it was created. That plaintiff became in law a corporation when its charter was approved and the Great Seal of the State affixed thereto, and as such was entitled to sue in the United States Circuit Court as a citizen of Mississippi, and the subscription of payment of the required amount of capital stock was not such a condition precedent that the corporation did not exist until it was paid. If the organization of the company as a corporation was tainted with fraud it was for the State by appropriate proceedings to annul the charter. *Wells Company* v. *Gastonia Company*, 177.

See JURISDICTION, F 3;
TAXATION, 1,
WRIT AND PROCESS.

COURTS.

1. *Federal tribunals not moot courts.*

Federal tribunals are not moot courts, and parties having substantial rights must, when brought before those tribunals, present those rights or they may lose them. *Riverdale Mills* v. *Manufacturing Co.*, 188.

2. *Weight to be given by Federal court to judgment of state court.*

A Federal court is not required to give a judgment in a state court any greater weight than is awarded to it in the courts of the State in which it was rendered. As it is the settled rule in Kentucky that an adjudication in a suit for taxes is not an estoppel between the parties as to taxes of any other year, even though such adjudication involves the finding of an exemption by contract, not only as to taxes involved in the suit but also as to all taxes that might be levied under the contract, the Federal courts will not enjoin the collection of taxes for subsequent years on the ground that their invalidity was adjudicated by such a judgment. *Covington* v. *First National Bank*, 100.

See IMMIGRATION; REMOVAL OF CAUSES;
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COURT OF CLAIMS.

See JURISDICTION, D.

CRIMINAL LAW.

Venue, where offense committed through the mails.

Where an offense is begun by the mailing of a letter in one district and completed by the receipt of a letter in another district, the offender may be punished in the latter district even though he could also be punished in the other. (*Re Pallister*, 136 U. S. 257.) *Benson* v. *Henkel*, 1.

See JURISDICTION, A 10;
REMOVAL OF CAUSES.

DAMAGES.

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See CONSTITUTIONAL LAW;
TAXATION, 1.

EJECTMENT.

Rule as to recovery on strength of own title not affected by defendant's cross-petition for equitable relief.

The guardian of an Indian minor appointed in a county of Kansas, other than that in which the land was situated, gave a deed to his ward's property; the grantees did not take possession or exercise any act of ownership for thirty years, when the original owner took possession of the land which was still vacant and unimproved, and for the first time asserted the invalidity of the guardian's deed; thereupon the grantees under the guardian's deed brought ejectment; the defendant answered by general denial and also by cross-petition asked for equitable relief quieting the title and declaring his guardian's deed void; the state court held the deed void but awarded possession to the grantees thereunder on the ground of the ward's laches. *Held*, error; that in an action of ejectment plaintiff must recover on the strength of his own title and not on the weakness of defendant, and that the rule is not affected in

this case by the fact that the defendants, by cross-petition, had asked for equitable relief. *Dunbar* v. *Green*, 166.

See JURISDICTION, A 1.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW. 6, 7.

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See CONSTITUTIONAL LAW, 9; JURISDICTION, F 2;
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EXEMPTIONS.

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JURISDICTION, F 4;
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FEDERAL QUESTION.

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FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 8, 9;
GARNISHMENT.

GARNISHMENT.

Liability, at suit of original creditor, of one satisfying judgment against him as garnishee in another State—Sufficiency of jurisdiction of person—Voluntary payment—Effect of failure by garnishee to give creditor notice of attachment.

A citizen of North Carolina who owed money to another citizen of that State, was, while temporarily in Maryland, garnished by a creditor of the man to whom he owed the money. Judgment was duly entered according to Maryland practice and paid. Thereafter the garnishee was sued in North Carolina by the original creditor and set up the garnishee judgment and payment, but the North Carolina courts held that as the situs of the debt was in North Carolina the Maryland judgment was not a bar and awarded judgment against him. *Held*, error and that: As under the laws of Maryland the garnishee could have been sued by his creditor in the courts of that State he was subject to garnishee process if found and served in the State even though only there temporarily, no matter where the situs of the debt was originally. Attachment is the creature of the local law, and power over the person of the garnishee confers jurisdiction on the courts of the State where the writ issues. A judgment against a garnishee, properly obtained according to the law of the State, and paid, must, under the full faith and credit clause of the Federal Constitution, be recognized as a payment of the original debt, by the courts of another State, in an action brought against the garnishee by the original creditor. Where there is absolutely no defense and the plaintiff is entitled to recover, there is no reason why the garnishee should not consent to a judgment impounding the debt, and his doing so does not amount to such a voluntary payment that he is not protected thereby under the full faith and credit clause of the Constitution. While it is the object of the courts to prevent the payment of any debt twice over, the failure on the part of the garnishee to give proper notice to his creditor, of the levying of the attachment, would be such neglect of duty to his creditor, as would prevent him from availing of the garnishee judgment as a bar to the suit of the creditor, and thus oblige him to pay the debt twice. *Harris* v. *Balk*, 215.

GRAND JURY.

Objection to selection of grand jurors; waiver by failure to except to.

Although a motion in arrest of judgment, based on the ground that the grand jury was not properly impaneled by reason of the deputy clerk acting in place of the clerk, was made in time, and the court below may have erred in its interpretation of the statute, the accused cannot avail of that even in this court unless the record shows that an exception was properly taken. The accused could have waived such an objection to the grand jury and by not excepting to the ruling he must be held to have acquiesced in the ruling and waived his objection. *Rodriguez* v. *United States*, 156.

HEALTH REGULATIONS.

See CONSTITUTIONAL LAW, 2.

IMMIGRATION.

Power of Congress to entrust decision as to citizenship to executive officer and conclusiveness of decision so made—Constitutional right to judicial decision.

Even though the Fifth Amendment does apply to one seeking entrance to this country, and to deny him admission may deprive him of liberty, due process of law does not necessarily require a judicial trial and Congress may entrust the decision of his right to enter to an executive officer. Under the Chinese exclusion, and the immigration, laws, where a person of Chinese descent asks admission to the United States, claiming that he is a native born citizen thereof, and the lawfully designated officers find that he is not, and upon appeal that finding is approved by the Secretary of Commerce and Labor, and it does not appear that there was any abuse of discretion, such finding and action of the executive officers should be treated by the courts as having been made by a competent tribunal, with due process of law, and as final and conclusive; and in *habeas corpus* proceedings, commenced thereafter, and based solely on the ground of the applicant's alleged citizenship, the court should dismiss the writ and not direct new and further evidence as to the question of citizenship. A person whose right to enter the United States is questioned under the immigration laws is to be regarded as if he had stopped at the limit of its jurisdiction, although physically he may be within its boundaries. *United States* v. *Ju Toy*, 253.

INDIANS.

See TREATIES.

INDICTMENT.

See REMOVAL OF CAUSES, 6.

INJUNCTION.

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PROPERTY;
TRADE NAME.

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INSURANCE.

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CONTRACTS;
LOCAL LAW (WASH.).

INTERSTATE COMMERCE.

State regulation as to liquors shipped from other States held not an interference —Wilson Act—Police power of State.

The malt liquor inspection law of Missouri provides for the inspection of malt liquors manufactured within the State and also for those manufactured without and held for sale and consumption within the State. The Supreme Court of the State sustained the law deciding among other things that the act does not affect liquors shipped into the State and held there for reshipment without the State, that it does not discriminate in favor of beer manufactured in the State, and that it is not a revenue, but an inspection law. The constitutionality of the law was attacked by a manufacturer of malt liquors without the State as an interference with interstate commerce, and also on the ground that as the amount of the inspection charge far exceeds the expense of inspection it is a revenue, and not an inspection law and therefore does not fall under permissive provisions of the Wilson Act. *Held*, a state statute which operates upon beer and malt liquors shipped from other States after their arrival and while held for sale and consumption within the State, is not an interference with interstate commerce in view of the provisions of the Wilson Act. The regulation of the sale of liquor is essentially a police power of the State and a provision in a state law, tending to determine the purity of malt liquors sold in the State, is an exercise of the same power. The purpose of the Wilson Act is to make liquor, after its arrival in a State, a domestic product, and to confer power on the States to deal with it accordingly. The police power is, hence, to be measured by the right of the State to control or regulate domestic products and this creates a state and not a Federal question as respects the commerce clause of the Constitution; and this court cannot review the determination of the state court that the statute involved in this case was not a revenue but an inspection measure. A state regulation, valid under the Wilson Act, as to liquors shipped from another State after delivery at destination is not an interference with interstate commerce because it affects traffic in, and deters shipments of, the article into that State. The rule that state inspection laws, which do not provide adequate inspection and impose a burden beyond the cost of inspection, are repugnant to the commerce clause of the Constitution does not apply to liquors after they have ceased to be articles of interstate commerce under the provisions of the Wilson Act. *Pabst Brewing Co.* v. *Crenshaw*, 17.

See TAXATION, 3.

INTOXICATING LIQUORS.

See INTERSTATE COMMERCE.

INVENTION.

See JURISDICTION, D;
PATENT FOR INVENTION.

JUDGE AND COURT.

See REMOVAL OF CAUSES, 2.

JUDGMENTS AND DECREES.

See CONSTITUTIONAL LAW, 8, 9; COURTS, 2; GARNISHMENT; JURISDICTION, A 1, 6; F 2.

JURISDICTION.

A. OF THIS COURT.

1. *Assertion of title under patent from United States insufficient, where jurisdiction of Circuit Court rested solely on diverse citizenship.*

In an action of ejectment plaintiff pitched his claim solely on a patent from the United States; defendant removed the action to the Circuit Court on the ground of diverse citizenship and obtained a verdict and judgment on the plea of prescription after nonsuit on plea of *res judicata;* the judgment was affirmed by the Circuit Court of Appeals. *Held,* that the judgment was final and the writ of error must be dismissed. The jurisdiction of the Circuit Court rested solely on diverse citizenship, the assertion of title under patent from the United States presented no question in itself conferring jurisdiction, and plaintiff's petition did not assert, in legal and logical form, if at all, the existence of any real controversy as to the effect or construction of the Constitution or of any law or treaty of the United States constituting an independent ground of jurisdiction. *Bonin* v. *Gulf Company,* 115.

2. *Direct review of Circuit Court judgment.*

This court has jurisdiction of a writ of error, upon a judgment dismissing the suit for want of jurisdiction, when it appears in due form that the ground of the judgment was want of service on defendant and that the plaintiff denied the validity of the removal of the case from a state court. *Remington* v. *Central Pacific R. R. Co.,* 95.

3. *Direct appeal from Circuit Court under section 5 of act of March 3, 1891.*

The authorities, holding that the right of appeal to this court from the Circuit Court, under § 5 of the act of March 3, 1891, is limited to cases where the jurisdiction of the Federal court as a Federal court is put in issue and that questions of jurisdiction applicable alike to the state and the Federal courts are not within its scope, apply to questions arising after a valid service has been made and not to the question of whether jurisdiction has or has not been acquired by proper service. *Board of Trade* v. *Hammond Elevator Co.,* 424.

4. This court can review by appeal under § 5 a judgment of the Circuit Court dismissing the bill on the sole ground that jurisdiction had never been acquired over the defendant, a foreign corporation, for lack of proper service of process. *Board of Trade* v. *Hammond Elevator Co.,* 424; *Kendall* v. *Automatic Loom Co.,* 477.

5. *Direct review of District and Circuit Courts.*
Since the passage of the act of March 3, 1891, this court has no jurisdiction to review judgments or decrees of the District and Circuit Courts, directly by appeal or writ of error, in cases not falling within § 5 of that act. *Ex parte Glaser*, 171.

6. *Final judgment; what constitutes.*
Where the judgment of the highest court of a State, in reversing a judgment against defendant, does not direct the court below to dismiss the petition but remands the cause for further proceedings, in harmony with the opinion, it is not a final judgment in such a sense as to sustain a writ of error from this court. *Schlosser* v. *Hemphill*, 173.

7. *Jurisdiction under section 709, Rev. Stat.—When Federal question does not arise by reason of violation of Federal statute.*
Plaintiff in error contended as defendant in the state court, which overruled the plea, that his notes were void because given in pursuance of a contract which involved the violation of §§ 3390, 3393, 3397, Rev. Stat., providing for the collection of revenue on manufactured tobacco. *Held*, that as an individual can derive no personal right under those sections to enforce repudiation of his notes, even though they might be illegal and void as against public policy, the defense did not amount to the setting up by, and decision against, the maker of the notes of a right, privilege or immunity under a statute of the United States, within the meaning of § 709, Rev. Stat., and the writ of error was dismissed. *Allen* v. *Arguimbau*, 149.

8. *Mandamus not granted where lack of jurisdiction of case.*
In cases over which this court possesses neither original nor appellate jurisdiction it cannot grant mandamus. *Ex parte Glaser*, 171.

9. *Propositions based upon conjecture and not raised below not considered on appeal.*
This court will not investigate or decide a proposition which was not raised in the court below and is based upon conjecture, even though the facts suggested might have existed. *Thompson* v. *Darden*, 310.

10. *Review of judgment of District Court for Porto Rico in criminal cases.*
Under §§ 34, 35 of the Foraker act of 1900, 31 Stat. 85, this court can review judgments of the District Court of the United States for Porto Rico in criminal cases where the accused claimed and, as alleged, was denied a right under an act of Congress and under the Revised Statutes of the United States. *Rodriguez* v. *United States*, 156.

11. *Want of jurisdiction to review judgment of state court refusing to restrain collection of unauthorized tax.*
There is no foundation for the jurisdiction of this court to review the judgment of the highest court of a State refusing to restrain the collection of a tax the imposition of which is not authorized by any law of the

State. (*Barney* v. *City of New York*, 193 U. S. 430.) *Savannah, Thunderbolt &c. Ry.* v. *Savannah*, 392.

12. *Writ of error to state court denying rights of locator of mineral claim under sections* 3224, 2326, *Rev. Stat.*

Where the necessary effect of the ruling of the state court is to deny to a locator of a mineral claim the protection of the relocation provisions of § 2324, Rev. Stat., if that section justified the claim based upon it, or if the record shows that the trial court considered that the plaintiff specially claimed and was denied rights under § 2326, Rev. Stat., authorizing an adverse of an application for a patent to mineral lands, a Federal question is involved and the motion to dismiss the writ of error will be denied. *Lavagnino* v. *Uhlig*, 443.

13. *Writ of error to state court dismissed where judgment below not shown to be based on Federal question—Certificate of Chief Justice of state court insufficient.*

Where the judgment of the state court rests on two grounds, one involving a Federal question and the other not, and it does not appear on which of the two the judgment was based and the ground, independent of a Federal question, is sufficient in itself to sustain it, this court will not take jurisdiction. The certificate of the Chief Justice of the Supreme Court of the State on the allowance of the writ of error that the judgment denied a title, right or immunity specially set up under the statutes of the United States, cannot in itself confer jurisdiction on this court. *Allen* v. *Arguimbau*, 149.

See CONTRACTS;
INTERSTATE COMMERCE;
PILOTAGE, 2.

B. OF CIRCUIT COURT OF APPEALS.

Finality of decision.

Where the jurisdiction of the Circuit Court has been invoked on the ground of diverse citizenship and plaintiff asserts two causes of action, only one of which involves a right under the Constitution, and the Circuit Court of Appeals decides against him on that cause of action and in his favor on the other, the judgment of that court is final and defendant cannot make the alleged constitutional question on which he has succeeded the basis of jurisdiction for an appeal to this court. *Empire Company* v. *Hanley*, 292.

See BANKRUPTCY, 1.

C. OF CIRCUIT COURTS

1. *Averment of diverse citizenship in pleadings—Mode of raising question—Residence and citizenship not synonymous—Absence not affecting citizenship.*

An averment in the bill of the diverse citizenship of the parties is sufficient to make a *prima facie* case of jurisdiction so far as it depends on citizen-

ship. While under the act of 1789, an issue as to the fact of citizenship can only be made by plea of abatement, when the pleadings properly aver citizenship, it is the duty of the court, under the act of March 3, 1875, which is still in force, to dismiss the suit at any time when its want of jurisdiction appears. A motion to dismiss the cause, based upon proofs taken by the master, is an appropriate mode in which to raise the question of jurisdiction. Residence and citizenship are wholly different things within the meaning of the Constitution and the laws defining and regulating the jurisdiction of the Circuit Courts of the United States; and a mere averment of residence in a State is not an averment of citizenship in that State for the purpose of jurisdiction. One who has been for many years a citizen of a State is still a citizen thereof, although residing temporarily in another State but without any purpose of abandoning citizenship in the former. *Steigleder* v. *McQuesten*, 141.

2. *When held to rest on ground of case arising under Constitution where invoked on ground of diverse citizenship.*

Where the jurisdiction of the Circuit Court is invoked on the ground of diverse citizenship, it will not be held to rest also on the ground that the suit arose under the Constitution of the United States, unless it really and substantially involves a dispute or controversy as to the effect or construction of the Constitution upon the determination of which the result depends, and which appears on the record by a statement in legal and logical form such as good pleading requires and where the case is not brought within this rule the decree of the Circuit Court of Appeals is final. *Empire Company* v. *Hanley*, 292.

See CORPORATIONS;
Ante, A 1.

OF DISTRICT COURT. *See* Bankruptcy, 1.

D. OF COURT OF CLAIMS.

Under act of March 3, 1887—Royalties for use of invention not recoverable in Court of Claims.

In order to give the Court of Claims jurisdiction under the act of March 3, 1887, the demand sued on must be founded on a convention between the parties—a coming together of minds—and contracts or obligations implied by law from torts do not meet this condition. (*Russell* v. *United States*, 182 U. S. 516, 530.) An employé of the Bureau of Printing and Engraving, who at his own cost and in his own time perfected and patented a device for registering impressions in connection with printing presses, which with his knowledge and consent was used for many years by the Bureau, under orders of the Secretary of the Treasury, and who during that period never made any demand for royalties, cannot, under the circumstances of this case, recover such royalties in the Court of Claims on the ground that a contract existed between him and the Government, because, prior to the use of the device by the Government, the Chief of the Bureau promised to have his rights to the invention protected. *Harley* v. *United States*, 229.

E. Of Bankruptcy Court.

Determination of controversies relative to property, its ownership and liens thereon.

The bankruptcy court has jurisdiction of a proceeding in the nature of a plenary action brought by the trustee to determine controversies in relation to property held by the bankrupt or by other parties for him, and the extent and character of liens thereon; and this applies to a suit brought against parties claiming possession of goods in the bankrupt's store, as warehousemen, under a nominal lease of the store from the bankrupt. A receiver in bankruptcy is appointed as a temporary custodian and it is his duty to hold possession of property until the termination of the proceedings or the appointment of the trustee, and meanwhile the bankruptcy court has possession of the property and jurisdiction to hear and determine the interests of those claiming liens thereon or ownership thereof, and this jurisdiction cannot be affected by the receiver turning the property over to any person without the authority of the court. *Whitney* v. *Wenman*, 539.

F Of Federal Courts Generally.

1. *Powers in support of jurisdiction.*

A Federal court exercising a jurisdiction apparently belonging to it, may thereafter, by ancillary suit, inquire whether that jurisdiction in fact existed, and may protect the title which it has decreed as against all parties to the original suit and prevent any of such parties from relitigating questions of right already determined. *Riverdale Mills* v. *Manufacturing Co.*, 188.

2. *Conclusiveness of judgment entered in case where jurisdiction based on admitted diverse citizenship.*

Where parties litigate in a Federal court whose jurisdiction is invoked on the ground of diverse citizenship, alleged and admitted, the judgment or decree which is entered is conclusive and cannot be upset by either of them in any other tribunal on the mere ground that diverse citizenship did not actually exist. In an ancillary suit a party to the original action cannot challenge the jurisdiction of the Circuit Court in the original action on the ground that its admission of citizenship was an error and that a correct statement would have disclosed a lack of jurisdiction. *Ib.*

3. *Diverse citizenship—Corporations—When court will regard substantial rights rather than mere matter of organization.*

Although where two corporations of the same name, chartered by different States, exist and there has been no merger, the corporations are separate legal persons, the court may, where the circumstances as in this case justify it, look beyond the formal and corporate differences and regard substantial rights rather than the mere matter of organization. *Ib.*

4. *Yielding of jurisdiction for trial elsewhere—Election to remove—Rights of defendant.*

The rule that where jurisdiction has attached to a person or thing it is

exclusive in effect until it has wrought its function is primarily a right of the court or sovereignty itself. The sovereignty where jurisdiction first attaches may yield it, and this implied custody of a defendant by his sureties cannot prevent it, although the bail may be exonerated by the removal. Where the court consents. the Government may elect not to proceed on indictments in the court having possession of the defendant and may remove him to another district for trial under indictments there pending. Whether such election exists without the consent of the court, not decided. *Beavers* v. *Haubert*, 77

See IMMIGRATION.

G. OF STATE COURTS.
See NATIONAL BANKS, 2.

JURY.
See GRAND JURY.

LACHES.
See EJECTMENT.

LABOR.
See CONSTITUTIONAL LAW, 2.

LEX LOCI CONTRACTUS.
See CONTRACTS.

LIQUORS.
See INTERSTATE COMMERCE.

LOCAL LAW

Illinois. Divorce (see Constitutional Law, 9). *Harding* v. *Harding*, 317

Kentucky. Taxation, statute of March 21, 1900 (see Taxation, 2). *Covington* v. *First National Bank*, 100.

Mississippi. Corporations (see Corporations). *Wells Company* v. *Gastonia Company*, 177.

Missouri. Liquor inspection law (see Interstate Commerce). *Pabst Brewing Co.* v. *Crenshaw*, 17.

New York. Labor law, section 110 (see Constitutional Law, 2). *Lochner* v. *New York*, 45. Evidence by physicians, sections 834, 836, Code Civil Procedure (see Contracts). *Knights of Pythias* v. *Meyer*, 508.

North Carolina. Practice (see Corporations). *Wells Company* v. *Gastonia Company*, 177

Pennsylvania. Administration of property of absentees, statute of 1885, Public Laws, p. 155 (see Constitutional Law, 5). *Cunnius* v. *Reading School District*, 458. Taxation, act of June 8, 1891 (see Taxation, 1). *Delaware, L. & W R. R. Co.* v. *Pennsylvania*, 341.

Utah. Ditch law (see Constitutional Law, 4). *Clark* v. *Nash*, 361.

Virginia. (See Pilotage, 1.) *Thompson* v. *Darden*, 310.

Washington. Exemptions—Laws of 1897, p 70, relative to proceeds of life insurance, held not in conflict with state constitution. The statute of the State of Washington, Laws of 1897, p. 70, exempting proceeds or avails of all life insurance from all liability for any debt, is not in conflict with the constitution of that State as construed by its highest court and exempts the proceeds of paid-up policies, and endowment policies, payable to the assured during his lifetime. *Holden* v. *Stratton*, 202.

See GARNISHMENT.

MAILS.

Power of Postmaster General to regulate railway mail contracts.

The Postmaster General is given the power to arrange the railway routes upon which the mail is to be carried, and to adjust and readjust compensations, subject only to limitation of ascertaining the rate by average weight of mails. There is nothing in § 4002, Rev. Stat., which requires the abrogation of a prior contract when an extension is made beyond the terminal of an established route or which precludes provision for the extension alone. While a contract may not be forced upon a railway it may accept and become bound by the action of the Post Office Department. *Chicago, M. & St. P Ry. Co.* v. *United States*, 385.

See CRIMINAL LAW.

MANDAMUS.

See JURISDICTION, A 8.

MINERAL LANDS.

See JURISDICTION, A 12;
PUBLIC LANDS.

MORTGAGE.

See BANKRUPTCY, 3.

NAME.

See TRADE NAME.

NATIONAL BANKS.

1. *National character of—Control of Congress.*

National banks are *quasi*-public institutions, and for the purpose for which they are instituted are national in their character, and, within constitutional limits, are subject to control of Congress, and not to be interfered with by state, legislative or judicial action, except so far as Congress permits. *Van Reed* v. *Peoples' National Bank*, 554.

2. *Exemption from attachment.*

Under § 5242, Rev. Stat., a national bank, whether solvent or insolvent, is exempt from process of attachment before judgment in any suit, action or proceeding in any state, county or municipal court, *Pacific*

National Bank v. *Mixter*, 124 U. S. 721, nor can a state court acquire jurisdiction over a national bank situated in another State by the process of attaching property within its jurisdiction under § 4 of the act of July 12, 1882. *Ib.*

See TAXATION, 2.

NAVIGABLE WATERS.

See PILOTAGE, 1.

PATENT FOR INVENTION.

Pioneer patent—Latitude of expression in making claim—Infringement.

A greater degree of liberality and a wider range of equivalents are permitted where the patent is of a pioneer character than when the invention is simply an improvement, although the last and successful step, in the art theretofore partially developed by other inventors in the same field. The patent involved in this case for the unhairing of seal and other skins, while entitled to protection as a valuable invention, cannot be said to be a pioneer patent. In making his claim the inventor is at liberty to choose his own form of expression and, while the courts may construe the same in view of the specifications and the state of the art, it may not add to or detract from the claim. As the inventor is required to enumerate the elements of his claim no one is the infringer of a combination claim unless he uses all the elements thereof. Where the patent does not embody a primary invention but only an improvement on the prior art the charge of infringement is not sustained if defendant's machines can be differentiated. *Cimiotti Unhairing Co.* v. *American Fur Ref. Co.*, 399.

PATENT FOR LANDS.

See JURISDICTION, A 12;
TREATIES.

PAYMENT.

See GARNISHMENT.

PILOTAGE.

1. *State regulation; power of Congress to permit—Validity of Virginia law.*

Congress has power to permit, and by the act of 1789 and § 4235, Rev. Stat., has permitted, the several States to adopt pilotage regulations, and this court has repeatedly recognized and upheld the validity of state pilotage laws. The Virginia pilot law is not in conflict with § 4237, Rev. Stat., prohibiting discriminations because it imposes compulsory pilotage on all vessels bound in and out through the capes, and does not impose it on vessels navigating the internal waters of the State; nor can this objection be sustained on the ground that the navigation of the internal waters of Virginia is more tortuous than that in and out of the capes. *Thompson* v. *Darden*, 310.

2. *State law; grounds for avoidance by Federal court.*
If a state pilot law does not conflict with the provisions of the Federal statutes in regard to pilotage this court cannot avoid its provisions because it deems them unwise or unjust. *Ib.*

PISCARY.
See TREATIES.

PLEADING.
See JURISDICTION, A 1, C 1;
REMOVAL OF CAUSES, 3.

PLEDGE.
See WAREHOUSEMEN.

POLICE POWER.
See CONSTITUTIONAL LAW, 2, 5;
INTERSTATE COMMERCE.

POSTAL SERVICE.
See MAILS.

POWERS OF CONGRESS.
See CONSTITUTIONAL LAW, 3; PILOTAGE, 1,
NATIONAL BANKS, 1, TREATIES.

PRACTICE.
See CONTRACTS;
REMOVAL OF CAUSES;
TREATIES.

PREFERENCES.
See BANKRUPTCY, 3.

PROCESS.
See JURISDICTION, A 3, 4;
NATIONAL BANKS, 2;
WRIT AND PROCESS.

PROPERTY.
Collections of quotations of prices as—Effect on property rights of limited dissemination—Effect of illegal nature of acts concerned.
The Chicago Board of Trade collects at its own expense quotations of prices offered and accepted for wheat, corn and provisions in its exchange and distributes them under contract to persons approved by it and under certain conditions. In a suit brought by it to restrain parties from using the quotations obtained and used without authority of the Board, de-

fendants contended that as the Board of Trade permitted, and the quotations related to, transactions for the pretended buying of grain without any intention of actually receiving, delivering or paying for the same, that the Board violated the Illinois bucket shop statute and there were no property rights in the quotations which the court could protect, and that the giving out of the quotations to certain persons makes them free to all. *Held*, that even if such pretended buying and selling is permitted by the Board of Trade it is entitled to have its collection of quotations protected by the law, and to keep the work which it has done to itself, nor does it lose its property rights in the quotations by communicating them to certain persons, even though many, in confidential and contractual relations to itself, and strangers to the trust may be restrained from obtaining and using the quotations by inducing a breach of the trust. A collection of information, otherwise entitled to protection, does not cease to be so because it concerns illegal acts, and statistics of crime are property to the same extent as other statistics, even if collected by a criminal who furnishes some of the data. *Board of Trade* v. *Christie Grain & Stock Co.*, 236.

PUBLIC LANDS.

1. *Mineral lands—Conflict of boundaries—Adverse proceedings by relocator of forfeited senior claim.*

Under § 2326, Rev. Stat., where there was a conflict of boundaries between a senior and junior location, and the senior location has been forfeited, the person who made the relocation of such forfeited claim has not the right in adverse proceedings to assail the junior locator in respect to the conflict area which had previously existed between that location and the abandoned or forfeited claim. *Lavagnino* v. *Uhlig*, 443.

2. *Mineral lands—Abandonment of claim by senior locator.*

A senior locator possessed of paramount rights in mineral lands may abandon such rights and cause them to enure to the benefit of the applicant by failure to adverse, or after adverse, by failure to prosecute such adverse. *Ib.*

3. *Mineral lands—Section* 2326, *Rev. Stat., construed to qualify sections* 2319 *and* 2324.

The provisions of § 2326, Rev Stat., as construed in this case, so qualify §§ 2319 and 2324, Rev Stat., as to prevent mineral lands of the United States which have been the subject of conflicting locations, from becoming *quoad* the claims of third parties unoccupied mineral lands, by the mere forfeiture of one of such locations. *Ib.*

4. *Mineral lands—Right of deputy mineral surveyor to make location of claim.*

Quære, Whether a deputy mineral surveyor is prohibited by § 452, Rev. Stat., from making the location of a mining claim not decided. *Ib.*

See JURISDICTION, A 12;
TREATIES.

PUBLIC OFFICERS.

See PUBLIC LANDS, 4.

RAILROADS.

See CARRIERS;
CONSTITUTIONAL LAW, 6.

RAILWAY MAIL SERVICE.

See MAILS.

RECEIVERS.

Character as officer of court—Right to sue in foreign jurisdiction.

A receiver is an officer of the court which appoints him, and in the absence of some conveyance or statute vesting the property of the debtor in him, he cannot sue in courts of a foreign jurisdiction upon the order of the court appointing him, to recover the property of the debtor. (*Booth* v. *Clark*, 17 How. 338.) A receiver's right to sue in a foreign jurisdiction is not recognized upon principles of comity, as every jurisdiction in which it is sought by means of a receiver to subject property to the control of the court, has the right and power to determine for itself who the receiver shall be, and to control the distribution of the funds realized within its own jurisdiction. Where the receiver cannot maintain an action to recover property in a jurisdiction other than that in which he was appointed, jurisdiction is not established because the action is authorized to be instituted by the receiver in the name of the corporation, if it appears that in case of a recovery the property would be turned over to the receiver to be by him administered under the order of the court appointing him. *Great Western Mining Co.* v. *Harris*, 561.

See JURISDICTION, E.

RELEASE AND DISCHARGE.

Release of claim for personal injuries construed.

An employé of a railroad company executed a release which, after reciting that he had been injured in an accident, and that it was desirable to maintain pleasant relations, and avoid all controversy in the matter, and specifying certain slight bodily injuries including a scalp wound, released the company for a consideration of thirty dollars from all "claims and demands of every kind whatsoever for or on account of the injuries sustained in the manner and on the occasion aforesaid;" subsequently, after having remained in the company's employ about three months, he sued and obtained a verdict for permanent bodily and mental injuries, resulting from injuries not enumerated in the release, including a fracture of the skull; there was testimony going to show that the fracture was not known when the release was executed and that the permanent disability resulted from non-enumerated injuries. The trial court charged that the release related only to damages sustained by the enumerated injuries and to those sustained from the

non-enumerated injuries. *Held*, not error and that general words in a release are to be limited and restrained to the particular words in the recital; and the release in this case, not being for all injuries but only for the particular ones specified, was not a bar to a recovery for damages resulting from the non-enumerated injuries and that the application of this rule is not affected by the words "avoid all controversy in regard to the matter" as those words did not relate to the accident but to the specified injuries. *Texas & Pacific Ry. Co.* v. *Dashiell*, 521.

REMOVAL OF CAUSES.

1. *Time for filing petition for*

If a petition to remove is filed as soon as it appears in the case that the amount in controversy is sufficient to warrant removal it is filed in season even if the time for answer has expired under the New York practice, notwithstanding failure to serve a complaint as to which *quære*. *Remington* v. *Central Pacific R. R. Co.*, 95.

2. *Petition; to whom presented.*

Presenting the petition to a judge in chambers satisfied the statute. *Ib.*

3. *Estoppel to remove; effect of obtaining from state court order relieving from technical default in pleading.*

Following up a motion to stay in the state court the day after notice of the amount in controversy, and obtaining an order relieving defendant from any technical default, which order took effect the same day that the petition for removal was filed, two days after such notice does not estop defendant from removing the suit. The facts appearing of record, an allegation in a petition for removal that the time has not arrived at which defendant was required to answer or plead is sufficient. *Ib.*

4. *Power of Circuit Court to reopen question acted on by state court before removal.*

Although the state court, before removal, has refused, subject to an appeal, to set aside a summons, the Circuit Court has power to reopen the question and to set the summons aside. *Ib.*

5. *Removal for trial—Degree of proof necessary in proceedings for.*

In removal proceedings, the degree of proof is not that necessary upon the trial, and where defendant makes a statement and under the law of the State claims exemption from, and refuses to submit to, cross-examination, the deficiencies of his statement may be urged against him, and, unless the testimony removes all reasonable ground of the presumptions raised by the indictment, this court will consider the commissioner's finding of probable cause was justified. *Beavers* v. *Haubert*, 77.

6. *Sufficiency of indictment as evidence of probable cause.*

In proceedings before an extradition Commissioner, if the indictment produced as evidence of probable cause in proceedings for removal is framed in the language of the statute, with ordinary averments of time

and place, and sets out the substance of the offense in language sufficient to apprise the accused of the nature of the charge against him, it is sufficient to justify removal, even though it may be open to motion to quash, or in arrest of judgment in the court in which it was originally found. *Benson* v. *Henkel*, 1.

7 *Commissioner—Question for trial court and not for Commissioner.*
Whether § 5451, Rev Stat., punishing bribery of officers of the United States, applies to bribery for acts to be committed in the future, in case a certain contingency which may never occur does occur, is a matter for the trial court to determine and not for the extradition Commissioner *Ib.*

8. *Removal for trial to District of Columbia.*
The District of Columbia is a District of the United States to which a person, under indictment for a crime or offense against the United States, may be removed for trial within the meaning, and under the provision, of § 1014, Rev. Stat. *Benson* v. *Henkel*, 1, *Beavers* v. *Haubert*, 77

See CONSTITUTIONAL LAW, 10;
JURISDICTION, A 2; F 4.

RESIDENCE.

See JURISDICTION, C 1.

RES JUDICATA.

See JURISDICTION, A 1.

RESTRAINT OF TRADE.

Contracts with telegraph companies for dissemination of quotations of prices to certain persons and to exclusion of others.
Contracts under which the Board of Trade furnishes telegraph companies with its quotations, which it could refrain from communicating at all, on condition that they will only be distributed to persons in contractual relations with, and approved by, the Board, and not to what are known as bucket shops, are not void and against public policy as being in restraint of trade either at common law or under the Anti-Trust Act of July 2, 1890. *Board of Trade* v *Christie Grain & Stock Co.*, 236.

RIPARIAN RIGHTS.

See CONSTITUTIONAL LAW, 4.

ROYALTIES.

See JURISDICTION, D

STATES.

See CONSTITUTIONAL LAW, 4, 5;
INTERSTATE COMMERCE;
LOCAL LAW;
NATIONAL BANKS, 1,
PILOTAGE, 1,
TAXATION;
TREATIES

STATUTES.

A. Construction of.

State statute of exemptions not to be limited.

Courts will not read into a broadly expressed state statute of exemption limitations which do not exist therein because they do exist in similar statutes of other States or because they deem the limitations equitable. To do so could not be construction of the statute but legislation; and the broad terms of the statute shows an intention of the legislature of the State to adopt broader and more comprehensive exemptions than those adopted by the other States. *Holden* v. *Stratton*, 202.

See Contracts;
Interstate Commerce;
Public Lands, 3.

B. Of the United States.

See Acts of Congress.

C. Of the States and Territories.

See Local Law.

STOCK.

See Taxation, 1.

TAXATION.

1. *Capital stock of corporation represents property in which capital invested —Exclusion from assessment, of property sent out of State—Illegality of taxation of capital stock on value arising from value of property out of State.*

A tax on the value of the capital stock of a corporation is a tax on the property in which that capital is invested, and therefore no tax can be levied upon the corporation issuing the stock which includes property that is otherwise exempt. The same rule that requires the exclusion from the assessment of valuation of capital stock of tangible personal property permanently situated out of the State applies to property sent out of the State to be sold and which is actually out of the State when the assessment is made. As a State cannot directly tax tangible property permanently outside the State and having no *situs* within the State, it cannot attain the same end by taxing the enhanced value of the capital stock of a corporation which arises from the value of property beyond its jurisdiction. While an appraisement of value is in general a decision on a question of fact and final, where it is arrived at by including property not within the jurisdiction of the State, it is absolutely illegal as made without jurisdiction. The collection of a tax on a corporation on its capital stock based on a valuation which includes property situated out of the State would amount to the taking of property without due process of law and can be restrained by the Federal courts. In assessing the value of the capital stock of a corpo-

ration of Pennsylvania under the act of that State of June 8, 1891, coal which is owned by the corporation, but at the time of the assessment situated in another State and not to be returned to Pennsylvania, should not be included. *Delaware, L. & W R. R. Co.* v. *Pennsylvania*, 341.

2. *Of national banks—Kentucky statute of March* 21, 1900, *held void—Discrimination.*

The statute of Kentucky of March 21, 1900, taxing shares of national banks, from the years 1893 to 1900 and thereafter held, void and in conflict with § 5219, Rev. Stat., as to those portions which are retroactive as imposing a burden on the bank not borne by other moneyed corporations of the State, and valid and not in conflict with § 5219 as to taxes imposed thereafter. A difference in methods in assessing shares of national banks from that of taxing state banks does not necessarily amount to a discrimination, rendering the act invalid under § 5219, and justify the judicial interference of courts for the protection of the shareholders, unless it appears that the difference in method actually results in imposing a greater burden on the national banks than is imposed on other moneyed capital in the State. *Covington* v. *First National Bank*, 100.

3. *State taxation of personal property employed in interstate transportation—Taxation of vessels.*

The general rule that tangible personal property is subject to taxation by the State in which it is, no matter where the domicil of the owner may be, is not affected by the fact that the property is employed in interstate transportation on either land or water. Vessels registered or enrolled are not exempt from ordinary rules respecting taxation of personal property. The artificial *situs* created as the home port of a vessel, under § 4141, Rev. Stat., only controls the place of taxation in the absence of an actual *situs* elsewhere. Vessels, though engaged in interstate commerce, employed in such commerce wholly within the limits of a State, are subject to taxation in that State although they may have been registered or enrolled at a port outside its limits. *Old Dominion Steamship Co.* v. *Virginia*, 299.

See CONSTITUTIONAL LAW, 6;
COURTS, 2.

TITLE.

See EJECTMENT.

TRADE.

See RESTRAINT OF TRADE.

TRADE NAME.

Personal name; right to exclusive use.

In an action to restrain the use of a personal name in trade, where it ap-

pears that defendant has the right to use the name and has not done anything to promote confusion in the mind of the public except to use it, complainant's case must stand or fall on the possession of the exclusive right to the use of the name. A personal name—an ordinary family surname such as Remington—cannot be exclusively appropriated by any one as against others having a right to use it; it is manifestly incapable of exclusive appropriation as a valid trade-mark, and its registration as such can not in itself give it validity. Every man has a right to use his name reasonably and honestly in every way, whether in a firm or corporation; nor is a person obliged to abandon the use of his name or to unreasonably restrict it. It is not the use, but dishonesty in the use, of the name that is condemned, and it is a question of evidence in each case whether there is a false representation or not. One corporation cannot restrain another from using in its corporate title a name to which others have a common right. Where persons or corporations have a right to use a name courts will not interfere where the only confusion results from a similarity of names and not from the manner of the use. The essence of the wrong in unfair competition consists in the sale of the goods of one person for that of another, and if defendant is not attempting to palm off its goods as those of complainant the action fails. *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict*, 118.

TREATIES.

Treaty of 1859 *with Yakima Indians, construed—Preservation of fishing rights under—Power of Federal Government to create servitude of lands which State must recognize.*

This court will construe a treaty with Indians as they understood it and as justice and reason demand. The right of taking fish at all usual and accustomed places in common with the citizens of the Territory of Washington and the right of erecting temporary buildings for curing them, reserved to the Yakima Indians in the treaty of 1859, was not a grant of right to the Indians but a reservation by the Indians of rights already possessed and not granted away by them. The rights so reserved imposed a servitude on the entire land relinquished to the United States under the treaty and which, as was intended to be, was continuing against the United States and its grantees as well as against the State and its grantees. The United States has power to create rights appropriate to the object for which it holds territory while preparing the way for future States to be carved therefrom and admitted to the Union; securing the right to the Indians to fish is appropriate to such object, and after its admission to the Union the State cannot disregard the right so secured on the ground of its equal footing with the original States. Patents granted by the United States for lands in Washington along the Columbia River and by the State for lands under the water thereof and rights given by the State to use fishing wheels are subject to such reasonable regulations as will secure to the Yakima Indians the fishery rights reserved by the treaty of 1859. *United States* v. *Winans*, 371.

TRIAL.

See CONSTITUTIONAL LAW, 3, 10;
JURISDICTION, F 4;
REMOVAL OF CAUSES.

UNFAIR COMPETITION.

See TRADE NAME.

VENUE.

See CRIMINAL LAW.

VESSELS.

See PILOTAGE, 1,
TAXATION, 3.

VOLUNTARY PAYMENT.

See GARNISHMENT.

WAIVER.

See CONSTITUTIONAL LAW, 11,
GRAND JURY.

WAREHOUSEMEN.

Technical possession of goods—Effect, as delivery of goods, of transfer of warehouse receipt.

Prior to the petition, the bankrupt, a wholesale merchant in Chicago, walled off part of the basement of his store and let it at a nominal rental to a warehouse company and there stored goods, so that they were not seen from the store, and the company alone had access thereto; and it exhibited signs to the effect that it occupied the premises and had possession of the goods, it charged the merchant for storage, and issued to him certificates or receipts for the goods, which he pledged and endorsed over to banks as collateral for loans. In an action brought by the trustee who claimed that goods were in the possession of the bankrupt and not of the warehouse company; *Held*, that a bailee asserting a lien for charges has the technical possession of the goods. The transfer of a warehouse receipt is not a symbolical delivery, but a real delivery to the same extent as if the goods had been transported to another warehouse named by the pledgee. Upon the facts in this case there is no reason to deny such a place of storage the character of a public warehouse so far as the Illinois statutes are concerned. The receipts issued in this case were to be deemed valid warehouse receipts so that their endorsement and delivery as security for loans constituted a pledge of the goods represented thereby valid as against attaching creditors, and if the receipts were not valid as warehouse receipts, the transaction constituted an equally valid pledge of the goods as such security. *Union Trust Co.* v. *Wilson*, 530.

WATERS.

See CONSTITUTIONAL LAW, 4;
PILOTAGE, 1,
TREATIES.

WHARVES.

See CARRIERS.

WRIT AND PROCESS.

1. *Sufficiency of service on foreign corporation.*

A Delaware corporation having its principal office in Indiana, and continuously carrying on a grain and stock brokerage business through the same persons in Illinois under an arrangement practically equivalent to agency, *held*, under the circumstances of this case, and in view of the statutes of Illinois as to service on foreign corporations, to be carrying on business in Illinois, and that service on such persons of process in a suit against it in the Circuit Court of the United States for Illinois was sufficient. *Board of Trade* v. *Hammond Elevator Co.*, 424.

2. Where the foreign corporation was doing no business and had no assets in the State, service upon a former officer residing therein, *held*, insufficient under the circumstances of this case. *Ib.*

3. *Semble*, service on a director of a corporation, which is doing no business and has no property in the State, when he is casually in the State for a few days, is bad. *Remington* v. *Central Pacific R. R. Co.*, 95.

See CONSTITUTIONAL LAW, 8;
JURISDICTION, A 2, 3, 4;
NATIONAL BANKS, 2.